

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

No. 7:04-CR-00032-1-F  
No. 7:12-CV-00157-F

JERMAINE DONNELL KORNEGAY, )  
Petitioner, )  
 )  
v. )  
 )  
UNITED STATES OF AMERICA, )  
Respondent. )

O R D E R

This matter is before the court on motion by petitioner, Jermaine Donnell Kornegay, to vacate his sentence pursuant to 28 U.S.C. § 2255, in light of the Fourth Circuit Court of Appeals' opinion in *United States v. Simmons*, 649 F.3d 237 (4<sup>th</sup> Cir. 2011). See Motions [DE-80 and DE-85]. The motions have been submitted to the undersigned pursuant to Rule 4, Rules Governing § 2255 Proceedings, for an initial review.

The pending motions constitute successive motions seeking relief pursuant to § 2255. This court denied a previous motion by order [DE-39] of May 12, 2006. Kornegay appealed the order, but the Fourth Circuit Court of Appeals dismissed the appeal, see *United States v. Kornegay*, No. 06-7112 (4th Cir. Nov. 3, 2006) [DE-48].

This court lacks jurisdiction to consider this successive § 2255 motion, absent a certification from the Fourth Circuit Court of Appeals, pursuant to § 2255(h). Therefore, it is ORDERED that the pending § 2255 motions [DE-80 and DE-85] are DISMISSED so that Kornegay may seek certification from the appellate court.<sup>1</sup>

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<sup>1</sup> The court acknowledges that Kornegay also has two pending motions [DE-76 and DE-77] in which he seeks a reduction of his sentence pursuant to the 2010 retroactive amendment to the advisory United States Sentencing Guidelines, and 18 U.S.C. § 3582(c)(2). Those motions will be ruled on separately at a later date.

SO ORDERED.

This, the 11<sup>th</sup> day of June, 2012.

  
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JAMES C. FOX  
Senior United States District Judge